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**Virginia Department of Social Services  
Division of Licensing – Adult Programs**

**Legislative Report 2018**

The General Assembly passed the following legislation this year that affects assisted living facilities and/or adult day care centers. The legislation is summarized below and there are links to the bills/joint resolution. Please contact your licensing administrator or licensing inspector if you have any questions. Thank you.

**Senate Bill 875 and House Bill 1439 (identical bills)**

[SB 875](#) and HB 1439 require the State Board of Social Services (Board) to amend the Standards for Licensed Assisted Living Facilities.

The current regulation, which became effective February 1, 2018, requires assisted living facilities (ALFs) that provide care for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare to have at least two direct care staff members who are awake, on duty, and responsible in each building when residents are present.

SB 875 and HB 1439 require the Board to allow an exception for ALFs that are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments.

The bills require the Board to promulgate regulations within 280 days of enactment to implement this exception. The bills also prohibit the Commissioner from enforcing the current requirement for two direct care staff members in cases involving assisted living facilities that are licensed for 10 or fewer residents if no more than three have serious cognitive impairments.

The regulation regarding the exception will be published in the Virginia Register of Regulations on July 23, 2018, Volume 34, Issue 24. This action is exempt from article 2 of the Administrative Process Act and there will be no comment period. The effective date of the regulation will be August 23, 2018.

## **House Joint Resolution 118**

[HJR 118](#) requests the Department of Social Services to study regulation of independent living communities. The Department shall examine the operations of independent living communities and the level of services they provide, including residential health care services coordinated through third-party providers, and determine whether some or all independent living communities should be regulated by a state agency and if so, to what extent and by what agency or agencies. In addition, the Department shall analyze what regulations should apply on the basis of the level of services provided. The Department shall also determine whether the Commonwealth should establish the Office of the Independent Living Community Ombudsman to receive, record, and respond to complaints submitted by residents and other citizens regarding the operations of independent living communities.

The process for moving forward with this study is currently underway. Involvement of interested parties and other stakeholders, as well as other state agencies will occur as the study progresses. HJR 118 calls for the Department of Social Services to complete its meetings by November 30, 2018, and submit a report of its findings and recommendations to the Governor and General Assembly for publication as a House or Senate document for the 2019 Session of the General Assembly.

## **House Bill 1130**

[HB 1130](#) relates to licensure of facilities operated by agencies of the Commonwealth.

HB 1130 allows an assisted living facility operated by an agency of the Commonwealth to appeal a proposed denial, revocation, or summary suspension of services or functions. The bill prohibits a civil penalty from being imposed on any assisted living facility, adult day care center, or child welfare agency operated by an agency of the Commonwealth.

The bill adds a new section to the Code of Virginia, § 63.2-1710.1, which states that the Commissioner may issue a summary order of suspension of the license to operate an assisted living facility, group home, or children's residential facility operated by an agency of the Commonwealth. It defines the procedures that must be followed before the summary order of suspension can take effect and it includes the provisions that must be included in the order. It states that if the summary order of suspension is referred to the Secretary of Health and Human Resources for resolution, the Secretary's determination shall be final; there is no judicial review.

HB 1130 also adds new section § 63.2-1710.2 of the Code of Virginia, which provides that an assisted living facility, adult day care center, or child welfare agency operated by an agency of the Commonwealth shall have the right to appeal a notice of intent. The bill sets forth the procedure for requesting an appeal, the time period within which the Commissioner must issue a decision, and the process for disputing the Commissioner's decision.

The provisions of HB 1130 are effective July 1, 2018. Plans are to present a Notice of Intended Regulatory Action (NOIRA) to the State Board of Social Services at its October 17, 2018 meeting to revise General Procedures and Information for Licensure.

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